THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.18800 of 2005

DATED:29.8.2005

Between:

J.M.Ashok Dutt

S/o. Late J.Krishna Murthy

R/o.H.No.5-2-27

Hyderbasti

Secunderabad, and another

…Petitioners

And

State of Andhra Pradesh,

Rep. by its Secretary, Roads and Buildings Department,

Secretariat Buildings, Hyderabad.

and others

…Respondents

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ORDER:

The petitioners are brothers. They alleged that the land admeasuring 11,570 Sq.yards comprised in S.No.318/1 of Gaddiannaram Village is their inherited property. Right was also claimed by Government as well as Municipal Corporation of Hyderabad (MCH) as forming part of pre-existing road as well as widened road. Therefore, in the first round of litigation, petitioners filed W.P.No.8794 of 1988 before this Court complaining violation of rights under Article 311-A of the Constitution of

India. The Writ Petition was disposed of by this Court on 2.1.1998 directing the Government and the MCH to initiate proceedings under law for acquiring the land. MCH, however, filed a review petition being Review W.P.M.P.(SR) .No.41992 of 1999 with an application to condone the delay. This review petition as well as related contempt case filed by petitioner C.C.No.2109 of 1998 were heard together by a Division. By order dt.14.12.1999 the Division Bench dismissed the review application filed by MCH and disposed of the contempt case filed by the petitioners observing that the procedure for land acquisition would involve time, and also gave liberty to MCH to raise all the pleas in land acquisition proceedings. Be it noted, in the review application, MCH claimed that the land which was allegedly claimed by petitioners is Government land and that there has been a road on the land. After disposal of the matter by this Court, as noticed hereinabove, MCH preferred a special leave petition before the Hon'ble Supreme Court, being S.L.P. (Civil) No.14642-14643/2000 which was dismissed on 25.2.2002. Thereafter, the Assistant City Planner, MCH sent a request to Land Acquisition Officer-cum-Deputy Collector, sixth respondent herein, who after conducting due enquiry and following due process of law passed award on 29.11.2003 observing that as the land is a Government land, no award need be passed. Such award was passed on 29.11.2003. It is also brought to the notice of this Court that petitioner sought reference under Section 18 of the Land Acquisition Act, 1894 (for short, the Act) on 10.2.2004 and sixth respondent, by Memo No.A/69/1999/167, dt.13.2.2004 rejected the request to refer the matter to Civil Court observing that it is belated. Now, the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the award in proceedings No.A/69/99, dt.29.11.2003 as illegal and arbitrary and for a consequential direction to fifth respondent to pay compensation.

Learned counsel for the petitioners made submissions for a considerable length of time on the maintainability of Writ Petition as well as merits of the case. These are opposed by learned Government Pleader for Land Acquisition and learned Standing Counsel for MCH. As held by the Supreme Court in **Sharda Devi v. State of Bihar** when the land which is utilized for public purpose is a Government land, there was no necessity at all to acquire the said land and as a necessary corollary any reference under Section 18 or Section 30 of the Act would be wholly without jurisdiction. Therefore, the petitioners have to necessarily approach the Civil Court for appropriate declaration and title after complying with legal formalities of issuing notice before filing suit. Except making observations and giving liberty to petitioners to approach the Civil Court, no relief can be granted to petitioners. The Writ Petition, in the factual background, is not maintainable.

The Writ Petition with the above observations is dismissed. No costs.

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29.8.2005 (V.V.S.RAO, J)

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